

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE **SEP 18 1998**
THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350Internet Address: <http://www.dps.state.ny.us>FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**PUBLIC SERVICE COMMISSION**MAUREEN O. HELMER
ChairmanJOHN B. DALY
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JAMES D. BENNETTLAWRENCE G. MALONE
General CounselJOHN C. CRARY
Secretary

September 18, 1998

Hon. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: In the Matter of Pacific Bell Telephone Company;
Pacific Bell Tariff FCC No. 128; Pacific Bell
Transmittal No. 1986 - CC Docket No. 98-103

Dear Secretary Salas:

The New York State Department of Public Service (NYDPS) submits this letter, in lieu of Comments on Direct Case, in the above-captioned proceeding. Pacific Bell's Transmittal No. 1986 establishes a new offering, Pacific Bell Asymmetrical Digital Subscriber Line (ADSL) Service, which enables end users to obtain high speed Internet access. Specifically, Pacific Bell contends that an interstate tariff is appropriate because Internet traffic is primarily interstate in nature.

This tariff offering raises a host of issues regarding access to Internet-based services, which we have just begun to analyze. Far more dialogue and debate is required before a final

determination on the jurisdictional nature of such traffic is made.¹ Our interest in these issues is grounded in the concern that telecommunications networks continue to interconnect efficiently for the exchange of traffic and that bottleneck facilities, such as the local loops, continue to be available at just and reasonable rates. Regulation of the Internet is not at issue.

We recently completed a proceeding on the reciprocal compensation scheme between carriers who transport calls from end users to Internet Services Providers (ISPs). The New York Public Service Commission determined that

"[a] call to an ISP is no different from a call to any other large volume customer, such as a local bank or a radio call-in program. These calls are all local calls and are billed at local rates. They are also treated as local calls for ARMIS Reporting and Separations. The fact that the call may sometimes be handed off and routed within the ISP's computer network(s) or through the Internet backbone does not alter the jurisdictional nature of the call from the end user to the ISP. Indeed, many intrastate communications ultimately connect to other networks."²

¹ In the event that the Commission determines this specific ADSL offering should be tariffed as an interstate offering, it should also make clear that it is in no way prejudging other ADSL applications or configurations, such as telecommuting or telephony.

² Case 97-C-1275 - Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic, Order Closing Proceeding (Issued March 19, 1998).

Thus, the Commission determined that calls to local telephone numbers of Internet Service Providers are intrastate telecommunications.

In the instant situation, Pacific Bell is using its own network to deliver the end user's communication to the ISP, rather than handing those calls off to another provider who completes the call to the ISP. The jurisdictional nature of a call does not change if the call is being transmitted by one carrier rather than two. Nor does Pacific Bell's use of a high speed private line in this instance, rather than the public switched network, necessarily change the jurisdictional analysis.¹


Finally, the Telecommunications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act), prohibits the

¹ Claims that Pacific Bell's ADSL service warrants federal regulation because ADSL's interstate traffic vastly exceeds the 10% threshold set for interstate regulation of analogous special access service (Pacific Bell at 13) are misplaced. The Commission's decision to adopt the 10% rule followed a Joint Board recommendation, which did not recommend direct interstate assignment of the cost of all mixed use, special access lines because the Joint Board concluded that such a method would undermine state regulatory authority. MTS and WATS Market Structure, Decision and Order, 4 FCC Rcd 5660, 5665 (1989). Here, the scope and nature of Internet traffic could be used to complete intrastate voice and data communication and, therefore, similar, careful analysis is appropriate.

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Commission from regulating matters "for or in connection with intrastate communications" (47 U.S.C. 152(b)). Therefore, to the extent that Pacific Bell is using a high speed technology service to enable an end user to reach an ISP within a state, the Commission should make clear that Pacific Bell or any other carrier must make such offers under an intrastate tariff.¹

Sincerely,


Lawrence G. Malone
General Counsel

cc: Attached Service List

¹ Moreover, should the Commission determine that the traffic terminates on the Internet and not at the ISP's point of presence, it is likely that the Internet will be used to complete intrastate voice and data calls. Under these circumstances, Section 152(b) of the Act serves as a ban on Commission regulation.

James Lanni
Rhode Island Division
of Public Utilities
100 Orange Street
Providence RI 02903

Joel B. Shifman
Maine Public Utility Commission
State House Station 18
Augusta ME 04865

Charles F. Larken
Vermont Department of
Public Service
120 State Street
Montpelier VT 05602

Rita Barmen
Vermont Public Service Board
89 Main Street
Montpelier VT 05602

Keikki Teasment
New Jersey Board of
Public Utilities
2 Gateway Center
Newark NJ 07102

Veronica A. Smith
Deputy Chief Counsel
Pennsylvania Public Utility
Commission
P.O. Box 3265
Harrisburg PA 17105-3265

Mary J. Sisak
District of Columbia
Public Service Commission
Suite 800
450 Fifth Street
Washington DC 20001

Telecommunications Report
1333 H Street, N.W. - 11th Floor
West Tower
Washington DC 20005

International Transcription
Services, Inc.
1231 20th Street
Washington DC 20036

Brad Ramsay
NARUC
Interstate Commerce
Commission Bldg., Room 1102
12th & Constitution St., NW
Washington DC 20044

Magalie Roman Salas
Secretary
Room 222
Federal Communications Commission
1919 M Street, NW
Washington DC 20554

Kathryn C. Brown, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW
Washington DC 20554

Camille Stonehill
State Telephone Regulation
Report
1101 King Street
Suite 444
Alexandria VA 22314

Alabama Public Service
Commission
P.O. Box 304260
Montgomery AL 36130-4260

Archie R. Hickerson
Tennessee Public Service
Commission
460 James Robertson Pky.
Nashville TN 37219

Sandy Ibaugh
Indiana Utility
Regulatory Commission
901 State Office Bldg.
Indianapolis IN 46204

Ronald Choura
Michigan Public
Service Commission
6545 Mercantile Way
Lansing MI 48910

Mary Street
Iowa Utilities Board
Lucas Building
5th Floor
Des Moines IA 50316

Gary Evenson
Wisconsin Public
Service Commission
P.O. Box 7854
Madison WI 53707

Gordon L. Persinger
Missouri Public Service
Commission
P.O. Box 360
Jefferson City MO 65102

Sam Loudenslager
Arkansas Public Service
Commission
1200 Center Street
P.O. Box C-400
Little Rock AR 72203

Maribeth D. Swapp
Deputy General Counsel
Oklahoma Corp. Commission
400 Jim Thorpe Building
Oklahoma City OK 73105

Marsha H. Smith
Idaho Public Utilities
Commission
Statehouse
Boise ID 83720

Edward Morrison
Oregon Public Utilities
Commission
Labor and Industries Bldg.
Room 330
Salem OR 97310

Mary Adu
Public Utilities Commission of the
State of California
505 Van Ness Avenue
San Francisco CA 94102

Rob Vandiver
General Counsel
Florida Public Service
Commission
2540 Shumard Oak Blvd.
Tallahassee FL 32399-0850

Glenn Blackmon
Washington U&TC
1300 S. Evergreen Park Dr., S.W.
P.O. Box 47250
Olympia WA 98504-7250

Federal Communications Commission
Competitive Pricing Division
Common Carrier Bureau
Room 518
1919 M Street, NW
Washington, DC 20551

Myra Karegianes
General Counsel
Illinois Commerce Commission
State of Illinois Building
160 No. LaSalle - Suite C-800
Chicago IL 60601-3104

Margia Hendrickson
Assistant Attorney General
Manager, Public Utilities Division
121 7th Place East, Suite 350
St. Paul MN 55101

Robin McHugh
Montana PSC
1701 Prospect Avenue
P.O. Box 202601
Helena MT 59620-2601

Cynthia Norwood
Virginia State Corp. Commission
P.O. Box 1197
Richmond VA 23201

Deonne Brunning
Nebraska PSC
1200 N. Street
Lincoln NE 68508

Wanda Harris
Common Carrier Bureau
1919 M Street, N.W.
Room 518
Washington DC 20554

Diane Munns
Iowa Utilities Board
Lucas State Office Building
Des Moines, IA 50319

Chairman
Maryland Public Service Commission
6 St. Paul Street
16th Floor
Baltimore, MD 21202-6806

The Hon. Michael K. Powell
Commissioner
Federal Communications Commission
1919 M Street, NW, Rm 844
Washington, D.C. 20554

The Hon. Gloria Tristani
Commissioner
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

The Hon. William E. Kennard
Commissioner
Federal Communications Commission
1919 M Street, NW, Rm. 814
Washington, D.C. 20554

The Hon. Susan Ness
Commissioner
Federal Communications Commission
1919 M Street, NW, Rm. 832
Washington, D.C. 20554

The Hon. Harold Furchgott-Roth
Commissioner
Federal Communications Commission
1919 M Street, NW, Rm. 832
Washington, D.C. 20554

Bill Allen
Bell Atlantic Telephone Corp.
158 State Street
Albany, New York 12207

Mary Liz Hepburn
Bell Atlantic Telephone Corp.
1300 I Street, N.W.
Washington, D.C. 20005

John F. Raposa
GTE Service Corporation
600 Hidden Ridge
HQE03J27
Irving, Texas 75038

M. Robert Sutherland
Bell South Telecommunications,
Inc.
1155 Peachtree Street, N.E.
Atlanta, Georgia 30309-3618

Durward D. Dupre
Pacific Bell Telephone Company
One Bell Plaza, Suite 3703
Dallas, Texas 75202